

Application No. : 09/815,982
Filed : March 22, 2001

REMARKS

Claims 1-8, 10-14, 19-24, 36, 38 and 41-58 were pending in the application. By this paper, Applicant has not amended, cancelled or added any new Claims. Accordingly, Claims 1-8, 10-14, 19-24, 36, 38 and 41-58 are presented herein for examination.

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§103 Rejections

Per Applicant's telephone discussion with the Examiner on May 12, 2006, Applicant herein provides the following remarks regarding overcoming the Examiner's Section 103 rejections of the Office Action via 35 U.S.C. Section 103(c).

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For the Examiner's convenience, Applicant notes that the filing date for the present application (09/815,982) was March 22, 2001, and that this application is a continuation-in-part of U.S. Pat. No. 6,471,655, which was filed June 29, 1999.

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US Pat. No. 6,228,034 to Voss et al. (hereinafter "Voss") was filed July 20, 1998 and issued May 8, 2001.

US Pat. No. 6,676,600 to Conero et al. (hereinafter "Conero") was filed August 30, 2000 and issued January 13, 2004, and claims priority to US provisional patent application Ser. No. 60/152,534 filed September 3, 1999.

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Claims 1, 6 – 8, 10 – 14, 19 – 24, 36, 38, 41 – 54, and 56 – 58 – Per page 2 of the Office Action, Claims 1, 6 – 8, 10 – 14, 19 – 24, 36, 38, 41 – 54, and 56 – 58 stand rejected under Section 103 as being unpatentable over Voss in view of Conero.

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(i) Applicant respectfully traverses firstly on the ground that Voss would qualify under 35 U.S.C. 103(c) as subject matter which would not preclude patentability of the aforementioned claims. **See e.g. MPEP § 706.02(L)(1 – 3).**

35 U.S.C. 103(c) provides in relevant part:

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(c)(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject

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matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. {emphasis added}

5 Under Applicant's interpretation of Section 103(c), Voss would be subject matter developed by another, as the inventive entity of Voss differs from that of the present application. See e.g. MPEP § 2136.04.

Applicant also notes that in a prior office action (dated April 20, 2005), that Voss was labeled by the Examiner as a 35 U.S.C. 102(e) prior art reference.

10 Applicant also submits that the subject matter of Voss and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. See also MPEP § 706.02(L)(3).

Applicant therefore respectfully submits that Claims 1, 6 – 8, 10 – 14, 19 – 24, 36, 38, 41 – 54, and 56 – 58 are in condition for allowance.

15 (ii) Further, and on independent grounds from the above arguments, Applicant submits that Conero qualifies as 103(c) prior art, thereby precluding its use in rendering Claims 1, 6 – 8, 10 – 14, 19 – 24, 36, 38, 41 – 54, and 56 – 58 obvious.

Under Applicant's interpretation of Section 103(c), Conero would also be subject matter
20 developed by another, as the inventive entity of Conero differs from that of the present application.

Applicant also believes that Conero would only qualify as prior art under one or more sections of (e), (f), (g) of Section 102. Specifically, Applicant does not believe Conero would qualify as prior art under any of sections (a), (b), (c) or (d) of Section 102.

25 Applicant also submits that the subject matter of Conero and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Hence, Conero should not preclude the subject matter of the claimed invention from being patentable.

Applicant therefore respectfully submits that Claims 1, 6 – 8, 10 – 14, 19 – 24, 36, 38, 41
30 – 54, and 56 – 58 would therefore be independently allowable on the grounds that Conero is a

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103(c) reference as well, and thus the foregoing claims would be patentable over the cited art on at least two separate and independent grounds.

5 **Claims 2 – 5, and 55** – Per page 4 of the Office Action, Claims 2 – 5, and 55 stand rejected as being unpatentable over Voss and Conero in view of Eckerle (US Pat. No. 5,289,823, hereinafter “Eckerle”). Applicant traverses on the grounds that both Voss and Conero qualify as prior art under 35 U.S.C. 103(c) as set forth above and hence shall not preclude patentability of the subject matter of Claims 2 – 5, and 55.

10 **Summary**

Based on the foregoing, Applicant respectfully submits that all claims presented herein are novel and non-obvious over the art of record, and are in condition for allowance.

Applicant respectfully requests that the Examiner pass this case to issuance at the earliest opportunity.

15 ***Other Remarks***

Applicant hereby specifically reserves the right to prosecute claims of different or broader scope in a continuation or divisional application, as well as all rights of appeal, including the pilot pre-appeal brief conference program.

20 Applicant notes that any claim cancellations or additions made herein are made solely for the purposes of more clearly and particularly describing and claiming the invention and responding to the aforementioned restriction election, and not for purposes of overcoming art or for patentability. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant’s position with respect to any claim or subject matter of
25 the invention, or (iii) acquiescence in any way to any position taken by the Examiner, based on such cancellations or additions.

Furthermore, any remarks made with respect to a given claim or claims are limited solely to such claim or claims.

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If the Examiner has any questions or comments that may be resolved over the telephone, he/she is requested to call the undersigned at (858) 675-1670.

Respectfully submitted,

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